THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 15682 of 2005

DATED: 27-07-2005

Between:

1 M. Mahaboob Saheb, S/o. Kasim Saheb,
R/o. Mydakur, Village & Mandal, Kadapa District and others.

..... PETITIONERS

AND

1 The Deputy Commissioner,

Endowments Dept., Kurnool and others.

.....RESPONDENTS

ORDER:

Heard Sri.P.Veera Reddy, learned counsel for the petitioners, learned Government Pleader for Endowments and Sri.V.Venu Gopal Rao, learned Standing Counsel appearing on behalf of the third respondent.

The petitioners, 16 in number, are said to be in possession of small extents, between 10 to 20 square yards, of land which the third respondent contends as belonging to the Temple and which the petitioners, on the other hand, contend as being part of a Muslim burial ground. On the matter being referred by the Assistant Commissioner under Section 83, of the A.P.Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act'), for evicting the petitioners, notices dated 09-07-2004 were issued to all

the petitioners in Form-I. Insofar as six of the petitioners are concerned, the respondents contend that notices were served. It is the case of the petitioners that notices were not served on them and they do not know on whom such notices were served. Insofar as the other ten petitioners are concerned, the notices sent by registered post with acknowledgement due were returned with the endorsement 'notices refused'.

On the ground that notices sent to the petitioners were deemed to be served and refused, the first respondent passed the order of eviction on 09.05.2005 and on the same day eviction notices were issued to the petitioners asking them to vacate the land in their possession within 15 days. Aggrieved thereby, the present writ petition is filed.

While reiterating the contentions raised by the petitioners, in the affidavit filed in the writ petition, Sri.P.Veera Reddy, learned counsel for the petitioners also refers to Section 83 Sub sections (2) and (3) of the Act, which reads thus:

> 83.(2) Where, on a perusal of the report received by him under sub-section(1), the Deputy Commissioner finds that there is a *prima facie* case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified in the notice should not be made. A copy of the notice shall also be sent to the trustee of the institution or endowment concerned.
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> (3) The notice referred to in sub-section(2) shall be served in such manner as may be prescribed.

While under Section 83(2) of the Act, the Deputy Commissioner is required to cause service of notice upon the encroachers specifying the particulars of the encroachment, service of notice, under sub-section (3) of Section 83 of the Act shall be in the manner prescribed i.e., by the Rules made in this regard.

The A.P.Charitable and Hindu Religious Institutions & Endowments (Removal of Encroachments) Rules, 1987(for short 'the Rules'), notified in G.O.Ms.No.645, dated 30.06.1989, prescribes the procedure for service of notice, conduct of enquiry etc. Rule 3 thereunder relates to the form and service of notice to the encroacher and under sub-rule (1), the notice referred to in sub-section (2) of Section 83 of the Act, to be issued by the Deputy Commissioner, is required to be in Form-I and is required to be served on the encroacher by Registered Post Acknowledgment due. Under Rule 3(2) of the Rules, in case of refusal or evasion to receive the notice sent for service in the manner specified in sub-rule(1) the notice shall be affixed on the front door or on any other conspicuous place of the residence of the encroacher; if he has changed his residence, the notice shall be sent to such changed address, if it is known, or a copy of the notice shall be affixed on the front door or other conspicuous place of his last known residence. Such affixture shall be deemed to be sufficient notice to the encroacher concerned.

Learned Government Pleader fairly submits that this procedure as prescribed in Rule 3(2) of the Rules has not been complied with.

Since the mode of service of notice, in case of refusal or evasion to receive the notice sent by Registered Post with Acknowledgment due is as prescribed in Rule 3(2) of the Rules referred to above, the impugned order dated 09.05.2005, without giving the petitioners herein an opportunity of being heard, is liable to be set aside, since no notices were served on the petitioners in accordance with the rules.

Learned Counsel, Sri.V.VenuGopal Rao, submits that it was with great difficulty that the respondents were able to effect service of the order of eviction passed on 09.05.2005 in accordance with Rule 3(2) of the Rules and that if notice is required to be sent afresh to the petitioners herein, it would result in considerable loss of time in completing the proceedings initiated under Section 83 of the Act.

Sri.P.Veera Reddy, learned counsel for the petitioners, very fairly, agrees that since the petitioners herein have approached this Court, it shall be deemed that they have taken notice of the proceedings initiated under Section 83 of the Act.

The petitioners herein are at liberty to file their objections to the proceedings initiated under Section 83 of the Act within three weeks from today and they shall appear before the first respondent on Monday, the 5th September 2005. It is for the first respondent, after complying with the procedural requirements of the Endowments Act and the Rules made thereunder, to consider the objections of the petitioners and pass appropriate orders.

The writ petition is accordingly disposed of. No order as to costs.

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(RAMESH RANGANATHAN, J)

Dated: 27-07-2005

vs